Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-351

STATE OF ALABAMA,

Petitioner

vs.

ROCKAWAY CORPORATION,

Respondent

On Petition for a Writ of Certiorari
to the Court of Civil Appeals
of the State of Alabama

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

The Respondent, Rockaway, urges this Court to deny the Writ prayed for because "Petitioner has not presented a substantial federal question." But it is evident that the attempt to extend a patent beyond its statutory terms whereby the patentee or his assignee derives a benefit beyond the term set by Congress raises a very basic and essential federal question: Does the patentee have the right and the power under the patent laws of the United States as interpreted by the Supreme Court of the United States to enter into a contract during the life of a patent, and renew that contract after expiration of a patent which will have the effect of extending that patent's term beyond 17 years in a basic economic manner? The courts of Alabama in the case here involved (346 So.2d 444, Appendix B to Petitioner's original brief) have misinterpreted the federal law to hold that the patentee does have such a right and have applied this misinterpretation to the Alabama taxing statutes. The only court available to correct such a misinterpretation of federal law and policy, as expressed by Congress in the patent statutes and as interpreted by the federal courts, is this Court. Accord-

ingly, the State of Alabama has petitioned this Court to issue its writ, review the case and set forth the proper interpretation of the patent laws for the edification of the state courts and the administrators of the state tax laws.

Already, since publication of the Alabama Court of Civil Appeals opinion in this case, other taxpayers have asserted that substantial portions of their "rental receipts" derived from tangible personal property in Alabama was actually "royalty payments" based upon licenses for the use of the patents covering the device or equipment which was rented. It is clearly to be anticipated, tax accountants and attorneys being the imaginative servants of their clients that they are, that in due course a taxpayer will claim that a substantial portion of a sales tax assessment was in error because the consideration was not for the sale of tangible personal property but "royalty payments" based upon a license of a patent covering the property sold.

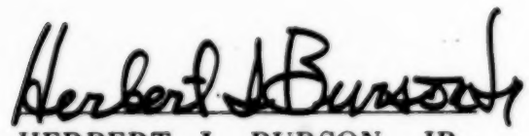
If, in fact, patents have an eternal life span for tax purposes, perhaps requiring only that a contract so specifying be executed within the 17 year statutory period, then what is the meaning of the words "limited times" which appear in the constitutional clause upon which the patent system is based? If this eternal life span grafted into the patent laws by the Alabama Court of Civil Appeals is proper then, sofar as a patentable device is concerned the sales tax and lease taxes of at least one state have been gutted for indeed, most equipment, such as computers, manufacturing machinery, road building equipment, in short, most modern mechanical and electrical devices and equipment are subject to at least one and often very many patents.

CONCLUSION

For the reasons set forth above and in Petitioner's original brief, the Writ should be granted and this Court should inquire into the propriety of a patentee's attempt to extend by contract his patent monopoly beyond the 17 year period set by law, even if for limited tax purposes.

Respectfully submitted,

WILLIAM J. BAXLEY, Attorney General, State of Alabama



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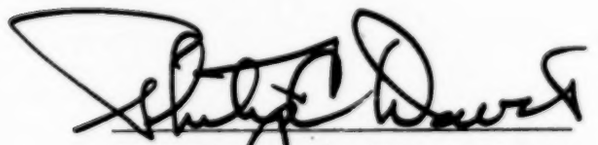

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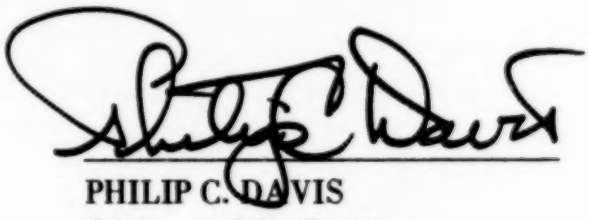
PROOF OF SERVICE

I, Philip C. Davis, of counsel for Petitioner and a member of the Bar of the Supreme Court of the United States, certify that I have served copies of the foregoing Petitioner's Reply Brief on Honorable Oakley Melton, Jr., P. O. Box 1267, Montgomery, Alabama 36102, and Honorable Thomas J. Bitar, Dillon & Bitar, 53 Maple Avenue, Morristown, New Jersey 07960, Counsel for Respondent Rockaway Corporation, by placing same in the United States mail, postage prepaid, on November 4, 1977. All parties required to be served have been served.



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